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EXAMINER

HORTON, YVONNE MICHELE

ART UNIT PAPER NUMBER

3635

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/633,056

Applicant(s)

PAZAR, MICHAEL S.

Examiner

Yvonne M. Horton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-86 is/are pending in the application.
- 4a) Of the above claim(s) 17-86 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14 and 15 is/are rejected.
- 7) ☒ Claim(s) 1-13 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: see attached exhibit.

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of the apparatus for keeping records in the reply filed on 6/4/04 is acknowledged.

Claims 17-86 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected apparatus, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6/4/04.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,4-6,13 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #2,075,859 to MARTIN. MARTIN discloses the use of a record keeping apparatus (8) embedded in a material, lines 40-41, and including at least one archival media containing information concealed therein, lines 18-23. In reference to claim 2, the material is cement also commonly known as concrete. Regarding claims 4-6, the receptacle (8) includes at least one cap (11) being formed from a non-corrosive metal, line 24, or plastic material, lines 44-48, and having threads (TR) as a means for releasably sealing the cap (11), see the marked attachment. In reference to claim 13, the receptacle (8) further includes a groove (G) that aids in maintaining the receptacle (8) within the material. Regarding claim 16, the receptacle (8) is cylindrical.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #2,075,859 to MARTIN. MARTIN discloses the basic claimed apparatus except for media information explicitly including a burial location. The receptacle (8) of MARTIN includes information about the deceased, lines 18-23; however MARTIN is not explicit as to what information is provided. It would have been an obvious matter of design choice to one having ordinary skill in the art to provide the receptacle with whatever information so desired. The situation and the person being buried would dictate the information needed for display or needed to be provided therein.

Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #2,075,859 to MARTIN in view of US Patent #4,697,316 to SEMON. MARTIN discloses the basic claimed receptacle except for the use of seal or O-ring. SEMON

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teaches that it is known in the art to provide a receptacle with a seal (74) in the form of an O-ring between the receptacle (26,28) and the cap (30). Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the receptacle of MARTIN with the O-ring seal of SEMON in order to provide a tight and secure grip between the cap and receptacle thereby preventing water or any other fluids from entering the receptacle and damaging its contents. Regarding claim 9, neither MARTIN nor SEMON discloses the use of a groove to receive the O-ring. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the receptacle with groove in order to ensure that the O-ring doesn't slip thereby ensuring an even further tight fit between the cap and receptacle.

Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #2,075,859 to MARTIN in view of US Patent #6,463,703 to MATTIS. MARTIN discloses the basic claimed receptacle except for the use of a sealing means and adhesive. MATTIS teaches that it is known in the art to provide a receptacle (18) with a sealing means (52,56,58) between the receptacle (18) and the cap (50); wherein the sealing means is an adhesive (56). Regarding claim 12, MATTIS does not explicitly detail that his adhesive is an epoxy resin; however, it would have been obvious to one having ordinary skill in the art to select a known material on the basis of its suitability for the use intended as an obvious matter of design choice.

Allowable Subject Matter

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Claims 14 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703) 308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


YMH
September 06, 2004

EXHIBIT

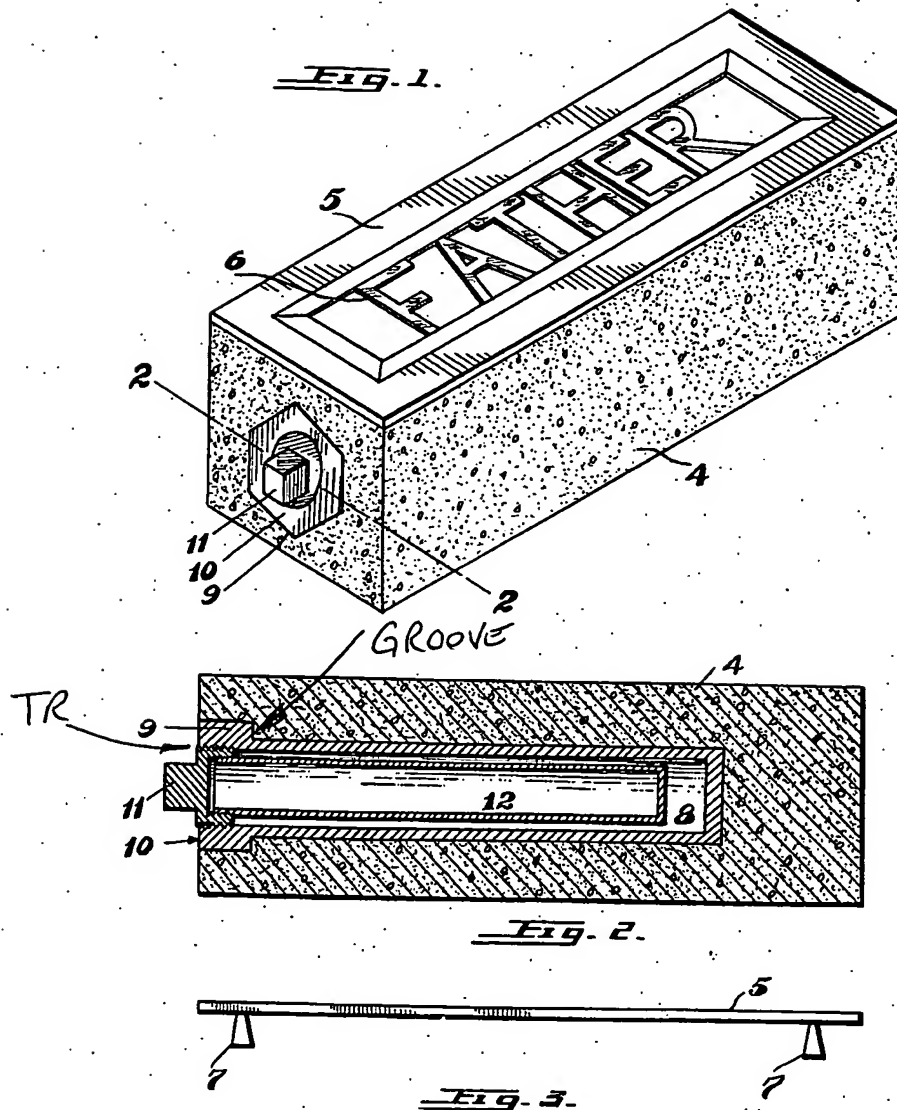
April 6, 1937.

J. MARTIN

2,075,859

GRAVE MARKER

Filed Sept. 16, 1936



Inventor
James Martin
By Frederick E. Bromley
Attorney